



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

June 9, 1992

Mr. Burton F. Raiford  
Interim Commissioner  
Texas Department of Human Services  
P. O. Box 149030  
Austin, Texas 78714-9030

Letter Opinion No. 92-15

Re: Whether an employee of the Department of Human Services may take sick leave to care for an ill child for whom she is a managing or possessory conservator, where the child is not a member of the employee's "immediate family" as defined in article V, section 8(2) of the General Appropriations Act (RQ-175)

Dear Mr. Raiford:

You have requested an opinion from this office as to whether an employee of the Department of Human Services (the department) may take sick leave to care for an ill child for whom she is a managing or possessory conservator under the Texas Family Code, where the child is not a member of the employee's "immediate family" as defined in the relevant section of the General Appropriations Act. The scope of sick leave for department employees is governed by article V, section 8(2) of the General Appropriations Act, Acts 1991, 72d Leg., 1st C.S., ch. 19, art. V, § 8(2). That section provides the following:

Sick leave with pay may be taken when sickness, injury or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his *immediate family* who is actually ill. *For purposes relating to regular sick leave, immediate family is defined as those individuals related by kinship, adoption, marriage or foster children who are so certified by the Department of Human Services who are living in the same household.* An employee's use of sick leave for family members not residing in that employee's household is strictly limited to the time necessary to provide care and assistance to a child or parent of the employee that needs such

care and assistance as a direct result of a documented medical condition. . . . [Emphasis added.]

If the managing or possessory conservator is related to the child by kinship, adoption, marriage, or as a foster parent and lives in the same household, as is generally the case, he or she clearly is entitled under section 8(2) to take sick leave to care for the child.

We have been informed, however, that your question concerns an instance in which the employee in question, though living in the same household, is not related to the child in any of the ways described in section 8(2). The statutory definition of "immediate family" for purposes relating to regular sick leave does not appear to apply to the situation you describe, where an employee is a conservator of a child within the Family Code, but is not a member of the child's "immediate family" as defined in the General Appropriations Act.

Nevertheless, it has been suggested that the department should interpret section 8(2) of the General Appropriations Act to include managing and possessory conservatorships in the unusual circumstances of this case as relationships the legislature intended to cover. When a literal reading of a statute is unambiguous and does not conflict with other provisions of law, courts generally view the words of the statute as evidence of the legislature's intent. See Attorney General Opinion JM-1171 (1990). However, in construing statutes, we must also look to the context and purpose of the statute taken as a whole. If a strictly literal interpretation of a statute would be contrary to the purpose of the legislature or lead to absurdity, courts will depart from the strict words of the statute. See Gov't Code § 312.006; *Stoner v. Hudgins*, 568 S.W.2d 898 (Tex. Civ. App.--Fort Worth 1978, writ ref'd n.r.e.); *Salas v. State*, 592 S.W.2d 653 (Tex. Civ. App.--Austin 1979, no writ); 67 TEX. JUR. 3d *Statutes* § 93.

In our opinion, the legislature clearly meant to permit employees to take sick leave to care for at least those members of their households for whose care they are legally responsible. The restricted definition of "immediate family" appears to have been designed to prevent the use of sick leave for the care of all but the most closely associated individuals. Unless there exists both a blood or legal relationship between the employee and the "family member" and a common residence

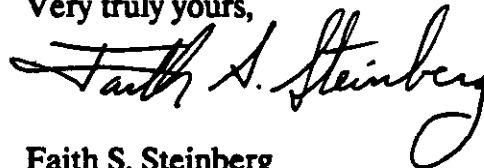
(evidencing the physical dependency of the family member on the employee), sick leave is not available.<sup>1</sup>

The relationship of conservatorship is one established by law. See Fam. Code ch. 14. Moreover, a managing conservator, a possessory conservator, and a parent all have the same statutory duty to a child entrusted to them: the duty of care, control, protection, and reasonable discipline of the child. See Fam. Code §§ 12.04(2) (duty of parent), 14.02(2) (duty of managing conservator who is not the parent of the child), 14.04(a)(1) (duty of possessory conservator during the time of possession). See generally Sampson, *Conservatorship, Possession, And Support Of Children*, 21 TEX. TECH. L. REV. 1323 (1990). In fact, a conservator generally is a parent of the child. An employee's use of sick leave to care for a child for whom she is a conservator would comport with the intent of the legislature both in authorizing use of sick leave to take care of immediate family members and in restricting such use to cases involving both dependency and blood or legal ties. Furthermore, we do not believe that the legislature intended to deny sick leave benefits to those caring for children within their conservatorship. In our opinion, therefore, section 8(2) should be construed to allow a managing or possessory conservator to take sick leave in the circumstances described.

### S U M M A R Y

An employee of the Department of Human Services who is a managing or possessory conservator of an ill child may take sick leave to care for the child even if the child would not qualify as a member of the individual's immediate family in a technical reading of article V, section 8(2) of the current General Appropriations Act.

Very truly yours,



Faith S. Steinberg  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>As set out above, an employee may take sick leave to care for a parent or child not residing in the same household, but that leave is strictly limited to the time necessary to provide care and assistance as a result of a documented medical condition. Acts 1991, 72d Leg., 1st C.S., ch. 19, art. V, § 8(2).